

Guidelines of Law in Intercultural Position*

juridical culture in Romanian context and the opportunity for reference points of iconic anthropology to emerge in its discourse

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Abstract

The paper focuses on different orientations of an issue related to Law, more specifically Human Rights, from the intercultural perspective, starting from concepts such as *diatopical hermeneutics*, *homeomorphic equivalent*, *cosmoteandric responsibility* - which Raymon Panikkar has used in his attempt to respond to the question that makes the title of one of his articles: *Is the concept of Human Rights a Western one* - or from phrases such as *glocal*, *governance*, *judicial pluriverse* - which C. Eberhard associates to some paradigmatic mutations in what is called a postmodern Law. If intercultural exigency suggests a fundamental pluralism situated in the profound horizon of the views and methods responsible for the organization of individual and collective lives, then, within the dynamics of this dialogic ambiance, some specifications of the juridical culture in Romanian context appear as necessary and pertinent.

Keywords: *right, interculturality, interdisciplinarity, anthropology, iconicity*

The international magazine for intercultural and transdisciplinary research – *INTERculture*¹ – indicates its orientation by regarding interculturality in the polymorphic view of mankind's different cultural traditions, therefore not only in the way univocally guaranteed by the framework of modern culture; on the other hand, it also acknowledges transdisciplinarity by involving various "*scientific*" disciplines as well as by resorting to other traditions of knowledge that rely on recovering and promoting a popular and vernacular type of knowledge, therefore on what is called *ethnoscience*.

The magazine, which focuses systematically on searching, discovering and highlighting viable alternatives to the problems of the contemporary world, aims to embark on a journey into a dialogic environment that attempts to rely on the transcendence of the gap, or, better said, on the integration, the recovery of the relationship between *mythos* and *logos*, *theory* and *praxis*, *science* and *wisdom*, *wisdom* and *love*.

In two notebooks published in *INTERculture* under the title *Dépasser la religion et la culture des Droits de l'Homme, de l'État-nation et de l'État de droit*, which represent a "chronicle-testimony" of the research that was carried out for 30 years at the Intercultural Institute in Montreal, Robert Vachon² states that the purpose of these pages is "not to deny people's rights and the Rule of Law, or to denigrate this religion/culture of our times"³, but to be concerned with and question the absolutism and hegemony of the myth of transculturality, transreligion and the universality of these notions.

R. Vachon draws attention to the delicate nature of this intercultural endeavour which, intent on approaching taboo issues such as the sacred notions/myths of *Human Rights*, *Nation-State*, *development*, *democracy*, *civilization*, can also make them appear relative.

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¹ The magazine was founded in 1968 by the Intercultural Institute of Montreal (IIM). IIM is a centre for intercultural research, formation and education which promotes cultural pluralism and a new social harmony.

² Robert Vachon was director of the magazine *INTERculture* and of IIM from 1970 to 1979.

³ R. Vachon, *Mot de la rédaction*, in "INTERculture", Cahier 142, October 2002, p. 1.

Vachon seeks to get to the sources of the Western thought which assures its representatives and supporters that they can be the only legitimate judges of human values, determining them to believe that their own criteria about transgression is sensible and/or that their solutions for transgression would be the implementation of Human Rights.

As to the purpose of the intercultural endeavour, Vachon underlines that it focuses neither on glorifying other cultures, which have their limits and weaknesses, nor on denying the validity and importance of Human Rights entirely. At the same time, however, he draws attention to the necessary vigilance against totalitarianism, integrism and imperialism of the Human Rights culture⁴ (and of democracy) which may be tyrannical, fundamentalist and totalitarian, just as any culture might turn to be, without being necessarily so.

According to R. Vachon, the theme of these notebooks, whose generic title we have just mentioned, could be given other titles which may be considered significant from the point of view of the positioning and orientation of their content: "*Beyond the Nation-State and the Rule of Law as the ultimate unit of political analysis*", "*Beyond the international right of the United Nations*", "*Beyond the Westphalian model of political and international order*", "*Emancipation from the political and legal culture of the West as the universal framework for reference*", "*Human rights, a Western, universal concept*".

"Is the Notion of Human Rights a Western Concept?" – this is the question that Raimon Panikkar, considered a mentor of IIM, uses significantly as the title of one his articles which reveals the need to identify and state the particular nature of the concept of *Human Rights* in order to have a clear understanding of the meaning, conditions and legitimacy of the *universal* character that it is associated or credited with in one way or another.

To which extent and how can the idea of societal order and just politics be advanced and structured within the framework and through the mediation of another culture, different from the one that is built by means of the concept of *Human Rights* in its Western perspective? – this question seems to be, in Panikkar's view, sensible as well as legitimate. It leads to another question: why would the concept of *Human Rights* need to be imposed as the unique or the most proper and well-founded concept able to bring order in a society?

In fact, Panikkar sees the matter of locating the concept in the West as one that also has the connotations of mapping a certain mental, not only territorial, spatial, geographical horizon, leading us inevitably towards a solid *cultural (particular) vision*, which brings about premises and implications that revolve around this paradigmatic Western concept.

Panikkar advances a methodology which has in its *diatopic hermeneutical* structure a *homeomorphic equivalent* through which the necessity of a "*dia-logic*" dialogue is preserved and acquires the real consistency of actual meetings.

Thus, as Panikkar puts it, it is neither the translation nor the analogies of *Human Rights* that should be looked for in other cultural languages,⁵ but the *homeomorphic equivalent* of the term. In other words, if Human Rights represent the basis of applying and respecting human dignity, an investigation must be carried out as to how and to which extent another culture fulfills its equivalent need, which can be done once there is a common basis between the two cultures.

⁴ A. Supiot draws attention to the risk of the Human Rights' fundamentalism that may nurture the fundamentalism of other systems of thinking and interpretations which can be used by these fundamentalist readings of Human Rights. A. Supiot, *Homo Juridicus*, ROSETTI Educational Publishing House, Bucharest, 2011, pp. 22-23. See Supiot, the above-mentioned work, p. 289.

⁵ The theme of this presentation is neither the critique of (inter)cultural perspectives on law (see B. Melkevik, for example), nor the approaches which advance translations of Human Rights by/through other cultures promoted by authors like A. Supiot, for example.

The reflection on and the *intercultural* critique of the concept of *Human Rights* prove to be pertinent in the dialogic space of meetings, offering perspectives for an internal critique and for setting the limits of this concept's validity, providing both opportunities for extension within a changed context as well as a mutual fertilization, thoroughly understood and revealed by displaying various outlooks on Man and Reality under the common *topic of pluralism*. Thus, the Indian thought presented by Panikkar constitutes both a sample-argument for a meeting between various perspectives in an *intercultural horizon*, and a vector indicating that cultural and juridical traditions should be discovered and developed by formulating homeomorphic standpoints which correspond (or not) to "Western rights."

For C. Eberhard, who is nowadays considered a supporter of *interculturality* and a follower of Vachon and Panikkar, the emergence of pluralism is inevitable, and the limits and potentialities of a mutation in postmodern law are made known within a new sphere of meanings and actions under the sign of *governance*, the *glocal* and *juridical pluriverse*.⁶

Due to such an approach, the *intercultural* setting points to the necessity of an opening towards other types of juridical experiences, sometimes radically different from those considered to be "universal" and "Western," and these experiences are created by "juridical cultures" between which there are not only differences on the procedural level, but also on the profound level of fundamentals and founding postulates.

C. Eberhard stresses that *intercultural* exigency advances a *fundamental pluralism* located at the level of the views about and the means to organize individual and collective lives, and not a pluralism reduced to a mere pluralization of modern Western inventions and institutions.

Therefore, in this perspective promoted by C. Eberhard, the pair *universalism/relativism*, which operated with abstractions in a sphere of ideas, is replaced by the pair *global/local*, which points to the real world in a pluralist space as an alternative to a uniform and exclusivist globalization.

As to this fundamental pluralism in accordance with intercultural exigencies, Panikkar shows that *Human Rights* are like a window through which a certain culture provides a just order for its people; however, the window cannot be seen by the people who live in this particular culture, and therefore they need another culture which can be seen through another window. Then, supposing that the human scenery is similar to and different at the same time from the one in the former vision, Panikkar asks whether there should be only one opening left, while the others are closed, done away with, even at the risk of the structure collapsing, or whether "*we should widen the openings as much as we can, and, most importantly, we should let people know that there are - and there must be - a multitude of windows*". Panikkar considers that it is the latter view that points to a healthy pluralism.

On the other hand, says C. Eberhard, as far as *intercultural dynamics* is concerned, a means for enrichment stems from exploiting the notion of *dignity* specific to Europe's modern juridical culture, a notion which is considered a fundamental symbol of humankind. However, he notices that in the particular view of this culture, *dignity* is embedded in the human being as an individual, while other cultures pinpoint it in the person as a means of interpersonal relations;

⁶ We aim only to mention, not to detail or comment on these concepts proposed by C. Eberhard regarding the pathways of law's transformation in the postmodern horizon; such concepts put forward a transition from a juridical solar system, which has the state in its centre, to a juridical galaxy, in which there are many regulatory centres supposed to be able to form a *pluralist* whole; in this postmodern course of action, there is a need for a militant juridical attitude and even for parajurists who are asked to get involved in creating such a Law outside the official structures.

dignity is also perceived as connected to the universe and/or as a link between the cosmos and the divine.

Hence, beyond the mutual answer, the *intercultural dialogue* requires a responsibility towards the possible answers related to the course of such relations of the human being, which may actually represent a method for us to become more complex and enriched, even with regard to our perspective on humankind and its dignity.

As Eberhard puts it, the attention to *responsibility* and its new forms of expression in contemporary societies brings about a vital question on humankind and its meaning. It thus points to a responsibility which takes into consideration this readjustment on three dimensions or plans which he calls *cosmotheandric responsibility*.

According to Eberhard, *cosmotheandric* intuition advances a reality which is based on three fundamentals: the human being, the world he inhabits and fundamental freedom. For Eberhard, this fundamental freedom representing life's underlying mystery can be perceived as the Divine as well as our fundamental humanity.

This cosmotheandric intuition is supposed to be able to decline the challenges of our contemporary world towards a new, threefold reading of "our contribution to life," and to involve a triple refoundation of our "being in the world," which would trigger a cosmotheandric redefinition of our responsibilities; by taking the cosmic and divine dimensions into account, such an intuition could also lead to a horizon of insight and new meanings for the Western notion of *human dignity*.

But the term *cosmotheandric* was actually coined and used before C. Eberhard by R. Panikkar who, asked what the difference between *cosmotheandricism* and *theandricism* is, gives the following answer:

"I use the term cosmotheandric intuition due to the respect for the Orthodox Christian Tradition⁷ which acknowledges 'theandricism' when mentioning *theopoiesis* or *theosis*, that is 'deification of man'. That is why I use the term cosmotheandricism, otherwise I would prefer the word *theantropocosmism*. I add the cosmos⁸ to the theandricism of the Christian Tradition (...)."

It is significant that R. Panikkar, mentor of IIC, makes this reference to the Orthodox Christian Tradition as a source of inspiration for cosmotheandric responsibilities. In fact, this dialogic space advanced by interculturality asks for a milieu in which the resources of the Eastern Christian tradition must be taken into consideration, including in debates about society projects, if we are to give credit to C. Eberhard who argues that Postmodern Law does not create society projects, nor does it launch policies, but it frames disputes and debates which lead to these *society projects* or policies subsequently turned into *legitimate, efficient and legal forms*.⁹

⁷ It is worth mentioning, without getting into many details, that through his *cosmotheandric* syntagm, R. Panikkar points to Eastern Christianity; on the other hand, although he uses the same syntagm, C. Eberhard considers that "the underlying mystery of life" can stand for either "man's fundamental nature" or for "the divine," and comes to opt for a location within the horizon of Buddhist illumination as a solution to living together in a responsible, solidary way, in a society of "awakening".

⁸ R. Panikkar, *Between God and the Cosmos/ A Non-dualistic Vision of Reality*, Herald Publishing House, Bucharest, 2006, p. 114, trans. Cornelia Dumitru.

We need to mention here that the Christian Tradition included the cosmos in the dialogue between man and God since its infancy. We can give the example of Maximus the Confessor who, in the 7th century, in his "Mystagogy," saw the cosmos as a church, therefore as a space of the meeting between man and God. We are not to analyse Panikkar's thorough understanding of *cosmotheandricism* as a non-dualistic vision, and what its relation with the Christian Tradition is.

⁹ See Linte Marius Dumitru, *The Old Man in Juridical Anthropology*, in "The Iconic Image: Anthropological Sketches" vol. 1, Platytera Publishing House, pp. 245-246. See C. Eberhard, *Les Droits de l'homme dans le „jeu des*

The Eastern Christian tradition has resources that have not been sufficiently explored or brought to the fore with regard to, for instance, what today's constitutional sphere of supreme values like *dignity*,¹⁰ *freedom*, *free development of personality*, *pluralism* and the anthropologic model that runs through them actually mean. Such resources also point to the reflection on the actual content about man and community involved in the making of a constructive, non-individualistic purpose of *subjective rights*, which the distinguished jurist and academician Val. Al. Georgescu¹¹ highlighted, and of fundamental rights as well. Furthermore, they shed light on the form and type of relation between persons, society, state, and on the types of associated¹² juridical, community and ethatic orders.

In a general sense, the preoccupation with the relation between Law and Religion emerges again, and Francois Terré remarks that the interrogation on the sacred is necessarily brought up in the discourse on Law.

In this respect, at the International Colloquy *Droit et Religion* organized by the French Association of Philosophy of Law, George Uscatescu presented a study on the genesis of the Romanian traditional law in its contact with Byzantine sources entitled *Law and Religion in the Romanian Experience*, which was then published in the prestigious magazine *Archives de philosophie du droit* (1993)¹³.

Among other things, G. Uscatescu writes about the presence of faith in juridical relations (therefore, even outside canon law) and about a genuine baptism of the Romanian law through the patristic spirit of the first Ecumenical Synods - a spirit founding "*a new and true logos in the European culture: the trinitary logos superior in its essence to any dialectic logos*" - which brought about a transformation of the spirit of law¹⁴.

We have to notice that juridical anthropology finds consistent resources in the horizon of the Eastern tradition, especially in the present context, unable as it is to avoid the contact with anthropological visions which guide, one way or another, the juridical topos as well as the community, ethatic and/or unional order.

It is worth mentioning J. M. Trigeaud, co-editor and editor in chief of *Archives de philosophie du droit* (1991-2005), proponent of personalist law and personalized law, who draws attention to the importance of the hypostatic person's mystery and of the icon in the Eastern Christian perspective.

As to the Eastern Christian space, the theme of personalized law and personalist law¹⁵, which J. M. Trigeaud admirably explores and presents— seizing upon the idea of nature and person in the dynamics of juridical culture, placing the person and the mask, the author and the actor¹⁶ on the juridical scene, making distinctions between *human nature* and *human person*,¹⁷

lois". *Prolégomènes à une approche anthropologique et dynamique à la hauteur de la complexité du XXI siècle*, in *Enjeux et perspectives des Droits de l'homme*, eds. J. Ferrand, H. Petit, L'Harmattan Publishing House, 2003.

¹⁰ See M. D. Linte, *On Dignity in Law and not Only*, in *Romanian Pandects*, no. 6, year XXXVIII, Wolters Kluwer Publishing House, Romania, Bucharest, 2011, pp. 103-129.

¹¹ Val. Al. Georgescu, *Subjective Law Facing the Renewal of Law*, in *Romanian Pandects*, 4th part, 1942, p. 76.

¹² See M. D. Linte, *The Order of the Body and/in the Juridical Sphere*, Platytera Publishing House, Bucharest, 2011.

¹³ See G. Uscătescu, *Law and Religion in the Romanian Experience*, in "Archives de philosophie du droit" (Paris, Sirey), Vol. 38, *Droit et religion*, 1993.

¹⁴ See M. D. Linte, *Religion and Law/ Iconic Recourse*, in "The Iconic Image: Anthropological Sketches", vol. III, Platytera Publishing House, Bucharest, 2013, pp. 229-282.

¹⁵ See L. M. Dumitru, *Image and Person in Law – Personalist Law / Personalized Law in J.M. Trigeaud's Approach*, in "The Iconic Image: Anthropological Sketches", vol. II, Platytera Publishing House, Bucharest, 2012, pp. 207-283.

¹⁶ See Jean-Marc Trigeaud, *Persona ou La justice au double visage*, Studio editoriale di cultura Publishing House, Genova, 1990.

between the relation according to nature and the one according to the person, between *natural right*, *human rights* and *the person's rights*, showing the possibility of successively presenting human rights in the light of the nature of things, human nature and the person, promoting *Primary Law* as "*an expression of the person's truth*,"¹⁸ etc- can find a horizon of opening, orientation and insight through iconic anthropology, which reveals the iconic image of the person as a means of rendering the law iconic.

Therefore, iconic anthropology can offer further details to this way of "exteriorizing the person's interior," in the sense of a transition to the organization of justice and law, a transition, according to J. M. Trigeaud 's *participative relation*, from the *prosopologic* to the *dikelogic* principle; it can also shed light on the *universalism of difference* specific to the *prosopon* in its dynamics, and on the rapport with the *universalism of similarity* noted by the above-mentioned author, etc.

In the same horizon of the emergence of apophatic, meta-rational personalism, Stamatios Tzitzis believes that through the *hypostas-person* model, the Christian theology founded its own teleology, and, by viewing the *dignity of the person* as the basis of *subjective rights*, it conferred them the meaning of *hypostatic rights*.¹⁹ S. Tzitzis stresses that this concept of person, deprived of the consistency of transcendental ontology, stood for the epiphenomenal mask in antiquity, while in modern times, there has been a replacement of *hypostas-person* with *reason-person* in the sense of *ens rationis*.

In his perspective on the person as an apophatic given, J. M. Trigeaud distances himself from either a *genericism* specific to existentialist and rationalist metaphysics or from scientism, which both hide the *prosopon*, and, according to the French jurist, are not able to assume the *singularity* and the burden of profound existential experiences, while also determining a narrowing of the *singular* to the particular, a process which was aggravated during the Age of Enlightenment. With J. M. Trigeaud, *personalist law* entails a paradigmatic detachment from *voluntary*, positivist law and also from *natural law* which, as long as it does not admit man's apophatic, meta-rational content and his integrity as *hypostas-person*, inevitably endows man only with the role of a *character*.

Hence, the issue refers not only to an affirmation of man's value, but also to an exploration and acknowledgement of the content of such a value, to a transfer of its content to the juridical sphere, and to the way in which this transfer necessarily brings about a perspective revealing a human type and implicitly a societal model promoted and set up by this very human type.

As to the present approach of the Christian tradition within the Romanian spiritual space and of its new resources, which can be taken into consideration in the *intercultural dialogue* and in the endeavour to identify relevant elements for the autochthon *juridical culture*, we need to bring Hieromonk Ghelasie to attention. At the end of the 20th century, he uses and highlights the *trinitary logic* with regard to the apophatic mystery of man as *hypostas-person*, and associates this logic with an iconic one, thus focusing on and revealing profound aspects of *iconic anthropology* in detail.

¹⁷ J. M. Trigeaud, *Métaphysique et éthique au fondement du droit*, Bière Publishing House, 1995.

¹⁸ See J. M. Trigeaud, *Droits Premiers*, Bière Publishing House, Bordeaux, 2001.

¹⁹ Stamatios Tzitzis, *Qu'est-ce que la personne?*, Armand Colin Publishing House, Paris, 1999, p. 65.

Having made this hesychast reference, we have to stress that the purpose of this presentation is to record the existence of such complex sources for the iconic anthropology²⁰, which are not to be detailed here. We briefly presented their background and the bridges they can cross to prove viable, formative, active and participative.

In conclusion, we believe that iconic anthropology, which has in Hieromonk Ghelasie a startling expression within the Romanian space, brings forward reference points which are welcome and appropriate at least in the sense of recovering and opening up multiple "windows" towards man on different levels and dimensions required by the intercultural paradigm. These reference points also prove valid as to a possible turning point in the history of juridical culture, the emergence of personalist law and personalized law.

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²⁰ See Ghelasie Gheorghe, *The Memories of a Hesychast*, vol I, II, Platytera Publishing House, Bucharest, 2006; Ghelasie Gheorghe, *The Mystagogy of the Icon*, Platytera Publishing House, Bucharest, 2010; Ghelasie Gheorghe, *The Mystery of Filiation*, Platytera Publishing House, București, 2011; Ghelasie Gheorghe, *The Image of Man*, Platytera Publishing House, Bucharest, 2014.